

N.D.A.G. Letter to Fox (Jan. 10, 1986)

January 10, 1986

Mr. John J. Fox
Assistant State's Attorney
Burleigh County Courthouse
514 East Thayer
Bismarck, ND 58501

Dear Mr. Fox:

Thank you for your letter of October 3, 1985, in which you ask whether sheriffs' inquiries of financial institutions to determine whether judgment debtors have bank accounts, and the corresponding account numbers, for the purpose of facilitating the levying process on behalf of judgment creditors are subject to the restrictions of N.D.C.C. Ch. 6-08.1.

N.D.C.C. Ch. 6-08.1 was enacted by the legislative assembly with the purpose of establishing specific statutory guidelines for financial institutions in responding to requests for disclosure of customer information. N.D.C.C. Ch. 6-08.1 mandates that specific legal process be employed by a law enforcement or governmental agency to obtain customer information from a financial institution.

N.D.C.C. § 6-08.1-05 provides in relevant part as follows:

6-08.1-05. GOVERNMENT ACCESS.

1. A governmental agency or law enforcement agency may obtain customer information from a financial institution pursuant to either of the following:
 - a. The consent of the customer, in accordance with this chapter.
 - b. Valid legal process, in accordance with this section.
2. A governmental or law enforcement agency may obtain customer information from a financial institution pursuant to a judicial or administrative subpoena duces tecum served on the financial institution, if all of the following are met:
 - a. There is reason to believe that the customer information sought is relevant to a proper law enforcement objective or is otherwise authorized by law.

- b. A copy of the subpoena has been personally served on the customer, or his legal representative, or has been mailed to the customer or his legal representative at his last-known address on or before the date of the subpoena, together with a notice that describes the nature of the inquiry, the specific customer information sought, and a description of the customer's right to challenge the subpoena pursuant to this chapter.
- c. Ten days have passed from the date of personal service of the subpoena on the customer or his legal representative, or fourteen days have passed from the date the subpoena was mailed to the customer or his legal representative, and the customer has not exercised his right to challenge the subpoena pursuant to this section.

A sheriff's request for customer information from a financial institution clearly falls within the scope of the statute. Furthermore, a sheriff's request for information does not fall within the exemptions enumerated in N.D.C.C. § 6-08.1-02.

The scope of "customer information" as defined by N.D.C.C. Ch. 6-08.1 is extremely broad. N.D.C.C. § 6-08.1-01(2) provides:

6-08.1-01. DEFINITIONS. As used in this chapter:

* * *

- 2. "Customer information" means either of the following:
 - a. Any original or any copy of any records held by a financial institution pertaining to a customer's relationship with the financial institution.
 - b. Any information derived from a record described in this subsection.

"Customer information," thus, contemplates virtually any information derived from a financial institution concerning a particular customer. The existence of an account, and the corresponding account number, clearly fall within the scope of "customer information" as defined by the legislature.

It is my opinion, therefore, that sheriffs' inquiries of financial institutions to determine whether judgment debtors have bank accounts, and the corresponding account numbers, for the purpose of facilitating the levying process on behalf of judgment creditors are

subject to the restrictions of N.D.C.C. Ch. 6-08.1. Failure to comply therewith subjects the law enforcement agency to the liability provisions of N.D.C.C. § 6-08.1-08.

It is unfortunate that the legislature failed to exempt the levying process from the requirements of N.D.C.C. Ch. 6-08.1. The legislative history indicates that the legislature did not contemplate the negative impacts that this legislation would have on the effectiveness of the levying process in North Dakota. It appears that North Dakota law enforcement was generally unaware of the bill and consequently, did not actively participate in the drafting process. Hopefully, the regrettable consequences of the legislation will not prove to be an insurmountable burden for North Dakota law enforcement and the appropriate remedial measures can be pursued in 1987.

Sincerely,

Nicholas J. Spaeth

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